Judgment of Florida Supreme Court.

IN THE

SUPREME COURT OF FLORIDA,

JUNE TERM, A. D. 1955.

Tuesday, October 11, 1955

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Petitioner,

vs.

WILBUR C. KING, Chairman, and JERRY W. CARTER, and ALAN S. BOYD, Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,
Respondents.

The City of St. Petersburg and Wilbur C. King, Chairman, and Jerry W. Carter and Alan S. Boyd, Members of the Florida Railroad and Public Utilities Commission, Respondents, have filed motions to quash the Petition for Certiorari filed in this cause on August 26th, 1955, and to dismiss the proceedings and upon consideration thereof, it is ordered that said motions be and the same are hereby granted and said Petition for Writ of Certiorari is hereby quashed and proceedings dismissed.

Order of Florida Commission.

BEFORE THE

FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION.

City of St. Petersburg, Florida, a Municipal Corporation, Petitioner, *vs.* Atlantic Coast Line Railroad Company, a corporation, Respondent.	Docket No. 4063-RR. Order No. 2199.

Chairman Wilbur C. King, Commissioner Jerry W. Carter, and Commissioner Richard A. Mack each participated in the hearings and disposition of this cause.

ORDER OF THE COMMISSION.

This matter came on to be considered by the Commission as the result of a formal petition by the City of St. Petersburg, Florida, a municipal corporation, for relocation of the St. Petersburg freight and passenger depots of the Atlantic Coast Line Railroad Company.

The city's petition was filed with the Commission on April 7, 1954 and in substance alleged that the St. Petersburg passenger station of the Atlantic Coast Line Railroad is old, unsightly, obsolete, poorly arranged and no longer adequate from the standpoint of the convenience and necessities of the traveling public; that the passenger station situated only one block south of Central Avenue, which is the main thoroughfare of St. Petersburg, has become the source of

serious traffic congestion in downtown St. Petersburg; that the congested conditions in the vicinity of the passenger station resulting from its location in the heart of the city's business section, and the inadequate parking facilities provided for those having business with the railroad, have conspired to make the railroad's passenger station grossly inaccessible for the traveling public and others having legitimate business on the station premises; that the frequent movement of trains to and from the passenger station across heavily traveled streets in the main business section of the city causes serious traffic congestion, prevents the free flow of traffic, subjects the public to undue hazards, and constitutes a serious and continuing threat to the public safety and welfare of the city, its inhabitants and visitors by impeding the free and effective movement of fire, police and ambulance traffic; that the railroad's freight station, also in the heart of St. Petersburg's business district, is inadequate in size, location and accessibility and constitutes a menace to the public safety and welfare; that said freight station because of its location and arrangement constantly causes serious traffic congestion on heavily traveled public streets in the vicinity of said station; and that said passenger and freight depots should be relocated to sites not inimical to the public welfare and safety and in keeping with the public convenience and necessity.

Under its rules of practice the Commission served a copy of the city's petition on the respondent railroad and directed it to satisfy the complaint or plead thereto within fifteen days from the date of such notice.

Before the respondent railroad filed its response to the city's petition, the city filed a petition to take deposition by written and oral interrogatories. By this petition the city sought authority to take the deposition of the Atlantic Coast Line Railroad before a notary public in Wilmington, N. C., where the home office of respondent railroad is located. The petition averred that the deposition would be taken for the purpose of eliciting evidence material and relevant to the issues in this proceeding. Ninety-seven

written interrogatories were proposed in the petition and authority was sought to propound oral interrogatories in addition thereto.

Subsequent to the filing of the foregoing pleadings the railroad filed a motion to strike an allegation of paragraph 11 of the city's petition for relocation of the depots and also filed its answer to said petition. The City then filed a motion for more definite statement relating to the allegations of the Railroad's answer as to jurisdiction of the Commission and filed a motion to strike portions of the answer.

The Commission served notice on the Railroad of the petition to take deposition and directed it to show cause on June 1, 1954, at the Commission Offices in Tallahassee, Florida, why the Commission should not enter an order authorizing the taking of such deposition. Notice was also served on the parties to this proceeding of hearing on June 1 before the Commission at Tallahassee, Florida on the motions of both parties to strike and the City's motion for more definite statement. The Railroad then filed a motion to quash the notice and order of the Commission on the petition for deposition and the Commission notified the parties that such motion would also be heard on June 1. The railroad then filed a motion for continuance of the June 1 hearing and the Commission notified the parties that it would on June 1 hear oral argument on the railroad's motion for continuance and all other pending motions then filed or which might be filed prior to the time of hearing. Subsequent to this notice, the Railroad filed a motion to quash and objections to the petition to take deposition by oral and written interrogatories.

After due consideration of the pending pleadings the Commission denied the city's motion for a more definite statement, its motion to strike portions of respondent's answer, and the railroad's motion to strike portions of the city's petition for relocation of respondent's freight and passenger stations. At the same time the Commission designated one of its members to hold a pre-hearing confer-

ence in St. Petersburg for the purpose of determining which of the proposed interrogatories should be answered by respondent and directed that said commissioner hold a hearing thereafter in Wilmington, N. C., for the purpose of receiving the railroad's answers to those interrogatories which might be approved by the Commission.

On July 8, 1954 the Commissioner designated for that purpose held the pre-hearing conference as directed for the purpose of determining which of the city's interrogatories should be answered. At said conference the respondent railroad objected to answering any of said interrogatories. Thereupon the petitioner discussed the individual questions by groups. The first group of questions related to the adequacy of the present stations. The second group related to the cost of the present operations of the Railroad Company in comparison to the cost of operation in the event the freight and passenger stations were relocated. The third group of questions related to the location of the present stations as they affect traffic in and about said stations and their effect upon the growth of St. Petersburg's downtown business district. The last group of questions related to the convenience of the public. After the petitioner had advanced various reasons why the railroad should be required to answer the individual questions in each category, the Respondent raised specific objections to each individual question in each classification.

The parties supported their respective positions by the expert testimony of well-qualified engineers.

After having heard argument concerning the various interrogatories and being fully advised of the vast scope of the various questions involved, it was the opinion of the Commissioner designated to hold said prehearing conference that the interrogatories at that present time were premature and that the City of St. Petersburg should be required first to submit evidence at a public hearing in support of its petition for relocation of the freight and passenger stations of Atlantic Coast Line Railroad Company at St. Petersburg, Florida.

The full commission concurred in the findings and opinion of the Commissioner who held the conference and entered a formal order setting the matter down for a public hearing on the city's petition for relocation of respondent's freight and passenger stations. The public hearing was scheduled to be heard in St. Petersburg on October 5, 1954. When said hearing was convened the commission announced that two primary questions were involved, to-wit: (1) Should the present freight and passenger stations of the Atlantic Coast Line Railroad Company at St. Petersburg be relocated and replaced at a new location by new, modern and adequate facilities capable of fully meeting the public convenience and necessity, and (2) Where should such new facilities be located. By Order of the commission the October hearing was limited to the first question. At the same time the commission announced that a determination of the second question would be the subject matter of further hearings if the commission should enter an affirmative order concerning the first questions.

Voluminous testimony and exhibits were received at the October hearing from the petitioner. A subsequent hearing was held in December 1954 at which time the respondent railroad presented its testimony and exhibits in support of its opposition to the city's relocation petition. A third hearing was held in March 1955 for the purpose of receiving rebuttal evidence from the petitioner. At the conclusion of this hearing the commission requested the respective parties to file briefs, together with proposed findings of fact and conclusions of law, and announced that it would subsequently set a date for oral argument on the various issues involved.

Before the briefs were filed and oral arguments heard the respondent railroad filed a motion to dismiss the proceeding on the ground that it had been rendered moot by the action of the city in adopting an Ordinance requiring the railroad to elevate its tracks from 16th Street North to Bayshore Drive. The city filed an answer to respondent's motion and the commission advised the parties that oral argument would be heard on the motion on June 8 1955 at

which time oral arguments on the merits of the city's relocation petition would likewise be heard. Briefs were filed on June 6 and oral arguments were heard by the full commission on June 8 as scheduled.

After a careful study and consideration of the entire record herein, and based thereon, the commission makes the following findings of fact:

1. In the year A. D. 1887 or 1888, Orange Belt Company constructed a railroad from Sanford, Florida to St. Petersburg, Florida, and built a depot on the present site of the existing passenger station, at which time St. Petersburg was a village of about 30 inhabitants. The village grew into a City of 7,186 inhabitants by 1915, when the present passenger depot was constructed.

2. The Atlantic Coast Line Railroad tracks enter the City at 40th Avenue North at approximately 35th Street and run in a Southeasterly direction, crossing Central Avenue between 13th and 14th Streets, proceeds one block, then turns Eastward and continues to Tampa Bay. From the point where it intersects the City limit to Tampa Bay, it crosses practically all of the heavily traveled streets and avenues of the City at grade. After crossing 13th Avenue North to the end of the line it traverses the main business district of St. Petersburg. From 7th Street Eastward to 3rd Street, the railroad tracks are in the center of First Avenue South, thereby creating a divided street for the passage of motor vehicles. From 7th Street Westward to Central Avenue and from 3rd Street Eastward to the Bay, the tracks occupy the entire street and the same is not open to vehicular traffic.

3. Central Avenue is the main arterial highway of the City of St. Petersburg running from Tampa Bay on the East to Boca Ciega Bay on the West. The Atlantic Coast Line Railroad depot is situated almost a block south of Central Avenue between 2nd Street and 3rd Street, both of which are heavily traveled streets of the City. The Rail-

road tracks are on the South side of the depot. Both 2nd Street and 3rd Street are paved a width of 60 feet. First Alley South is also paved. There is an open space between the South margin of First Alley South and the North wall of the depot with the exception of a masonry island on the West end of this area used for the discharge of passengers from taxicabs and a grassed lawn surrounded by masonry work on the East end of this area. The entrance to the white waiting room is on the North side of the depot and from the South side of First Alley South to the entrance to the white waiting room is 71 feet 8 inches. First Alley South is 20 feet wide. The block between First Alley South and Central Avenue is designated as Block 32 and is built solid with stores from 2nd Street to 3rd Street, the rear end of which abut on First Alley South. The service entrances of these stores are on First Alley South which is used by commercial vehicles practically all of the time. On the 3rd Street side of the station building spaces are provided for the parking of vehicles along the island. At the West end of the area spaces are marked for the use of taxicabs. Along the North side of the building 17 spaces are provided for the parking of automobiles for the convenience of the public who have business to transact at the railroad station. On the 2nd Street side of the building are 5 or 6 spaces provided for parking automobiles but are used in the main by American Railway Express Company for its trucks. North of the grassed lawn surrounded by masonry work at the East end of the building is situated the office and warehouse of American Railway Express Company. From the North border of this grassed lawn to the South wall of the Railway Company is a distance of 40 feet. Between the grassed lawn and the depot is a driveway 26 feet wide but which is usually blocked with the trucks of the Express Company. The Express Company also has a service station at the East end of the depot. West of this service station is the white waiting room. Immediately West of the white waiting room is the ticket office and station agent's office. West of the ticket office is the colored waiting room. West of the colored waiting room is a covered patio. Immedi-

ately West of the patio is the baggage room and parcel check office. There is a covered walk on the South side of the depot which extends almost but not quite to the railroad tracks. This shelter extends almost the entire distance from 2nd Street to 3rd Street. Under this shelter, in front of the South door to the white waiting room, is a sign directing passengers to board trains East of 2nd Street. The building was erected in 1915. It is far from modern but is large enough in the main to accommodate the normal requirements of the traveling public and others having business at the station, although the waiting rooms are small without sufficient seating capacity for the convenience of the passengers and those who go to the depot to see them aboard and those who go there to meet passengers on incoming trains. The toilet facilities are insufficient and unsanitary.

The baggage room in the station is poorly located and difficult of access. It can be reached by car, truck or taxicab only through an alley 26 feet wide which runs Eastward from 3rd Street. Automobiles are usually parked adjacent to this narrow passage which makes an entrance to the bagbage room by automobiles difficult.

4. To reach the door of the white waiting room by motor car it is necessary to enter the areaway between First Alley South and the depot building either from 2nd Street or 3rd Street and this areaway is invariably congested with motor vehicles, particularly during the arrival and departure of trains. Seldom, if ever, is there one of the parking spaces, provided for the public, vacant for the use of passengers and those who go to the depot to transact business. It is almost impossible to find a vacant parking space within two or three blocks of the passenger depot and large numbers of people who go to the depot to board trains are compelled to double park in either 2nd or 3rd Street because of the congested condition of First Alley South and the small areaway North of the station, unload their baggage and take their motor vehicle two or three blocks to park the same.

5. The railroad yards of the Atlantic Coast Line are situated North of 13th Avenue North and West of 19th Street. All trains are made up for departure in the yards and are backed from the yards to the station across the mostly heavily traveled streets of the City and through the business district. During the winter months a train called the Havana Special arrives in St. Petersburg about 7:50 A. M., unloads at the depot and backs out to the yards. About 9:00 A. M. a train designated as the Champion, consisting of 16 to 18 units, backs from the yards to the depot to be loaded for departure at about 10:30 A. M. This train invariably is placed on the first track South of the depot, that is next to the Station. While this train is waiting for departure time invariably another train of 8 to 10 units, called the Southland, arrives on the tracks next to the train made up for departure, leaving very narrow space between the two trains for the passengers to detrain and for the unloading of baggage. There is no platform for the convenience of the passengers getting off between these two trains but merely an asphalt like substance on the ground. Nor is there any canopy or shelter provided for the convenience of passengers in inclement weather. Passengers alighting from the Southland cannot go directly to the depot, but are compelled to go either West to 3rd Street and around the locomotive, or Eastward to 2nd Street and around the broken end of the train waiting for departure, in order to reach the depot. Not infrequently the passengers are compelled to debouch into the street subjecting them to injury from traveling vehicles.

Passengers leaving on outgoing trains, in obedience to the sign directing them to go East of 2nd Street, cross 2nd Street and proceed toward 1st Street and sometimes cross 1st Street and go almost to Shore Drive, depending upon the particular pullman car to which the passenger is assigned. East of 2nd Street there is no platform provided for the convenience of passengers but only a narrow asphalt like pavement laid flush with the ground which extends only part of the way. There is no shelter or canopy of any kind East of 2nd Street for the protection of the passengers in inclement weather.

After the Southland arrives and the passengers detrain, the Champion departs, traversing the business district and crossing the most heavily traveled streets in the City, bypassing the railroad yards on its way to Jacksonville and points North. When the Southland unloads its baggage, mail and express cars, it backs out to the yards over the same route. About 3:30 in the afternoon the Havana Special backs from the yards over the same route for loading for departure at 7:30 P. M. and soon thereafter the Southland also backs from the yards to the station to be loaded for departure at 6:00 P. M. While the Southland is standing at the station, waiting for the time of departure, invariably the West Coast Champion arrives compelling the passengers to detrain between the Southland and the Champion. After the Champion unloads its mail, baggage, and express cars it backs to the yards and then the Southland departs at approximately 6:00 P. M. About 7:00 P. M. the Havana Special leaves over the same route.

6. All these trains, whether backing to the station for departure or arriving block 3rd Street, 2nd Street, 1st Street and most of the time Shore Drive. Incoming trains usually clear 3rd Street, which they block only long enough for the passage of the train, but by that time the locomotive is down between 1st and 2nd Streets, or between 1st Street and Shore Drive, depending upon the length of the train. In the winter season, trains with 15 or 16 cars entirely block 2nd Street and 1st Street until the passengers are unloaded from the cars, which takes generally from 6 to 10 minutes. During that time the train crew detaches the mail and express cars, pulls them down across 1st Street and back into the stub and track which is on the North side of the main tracks between 1st and 2nd Streets. This switching movement also blocks 1st street for a period of time. The engine then goes back and attaches to the remaining cars parked East of 1st Street, and then returns and connects up with the cars still standing in front of the station. Usually there is a dining car which occupies the second from the end position in the train near 3rd Street.

The entire train is then pulled back down Eastward blocking 1st Street again. The dining car is brought back Westward and attached to the Southland which is ready for departure. Then the whole train is pulled down again blocking 2nd Street for 6 or 7 minutes and then carried to the yard. The whole operation occupies 45 or 60 minutes or more, during which time one or more of the streets mentioned are blocked by train movements. Located as the station is, it is impossible to switch the incoming or outgoing trains without blocking either Shore Drive, 1st, 2nd, or 3rd Streets. In effect the whole area of St. Petersburg from 3rd Street Eastward is used by the Atlantic Coast Line Railroad Company as a train switching yard. On occasion, cars are left blocking the streets for as much as 96 minutes. The blocking occurs because it is impossible to clear the engine on 3rd Street and leave 2nd Street unblocked and sometimes 1st Street. Because 1st Avenue South is not open East of 3rd Street and 2nd and 3rd Streets are blocked by the movement of the trains the vehicular traffic cuts through First Alley South and the area between the margin of First Alley South and the depot, thereby causing terrific traffic congestion in both the alley and in front of the depot; and thus making the depot inaccessible to those desiring to go there to transact business with the railroad company or those who go there to depart on trains or to met passengers arriving on trains.

This blocking of the streets by the switching movements of the train interferes greatly with the flow of vehicular traffic during the busy time of each day.

7. At the time the depot was constructed in 1915 at its present location the City had a population of only 7,186 and there were few automobiles in use. St. Petersburg has grown rapidly and now has a population of approximately 125,000. The increased use of motor vehicles by the local population together with that of the visitors from other states has created a serious traffic problem in the vicinity of the depot and all streets crossed by the rails.

In 1915 when the station was constructed the total number of winter visitors approximated 23,000. In 1954 there

were approximately 534,000 winter visitors. In 1915 approximately 17,000 of them came by train. In 1954 approximately 84,000 of them came by train.

8. The main fire station of the City is located on 3rd Street South one block South of the depot, and it is a frequent occurrence that fire alarms are turned in when the trains block 3rd Street, 2nd Street, 1st Street and Shore Drive, compelling the fire equipment to detour in order to answer the alarm. It frequently happens that the blocking of these streets backs the traffic up beyond Central Avenue to the North and 2nd Avenue to the South and across the intersections thus blocking the East and West flow of traffic on Central Avenue at the intersections.

9. The station located as it is, under the conditions which exist, is insufficient to meet the requirements of the traveling public and does not provide the necessities or convenience which the traveling public requires.

10. In 1904 the City of St. Petersburg vacated that portion of 8th Street South extending from the South margin of First Alley South to the railroad tracks of the Atlantic Coast Line Railroad Company, and conveyed the same to said railroad company for freight depot purposes. The railroad built a freight depot on First Alley South and across the vacated portion of 8th Street just one-half block South of Central Avenue. At that time the City of St. Petersburg had a population under 2500. As the result of the construction of said depot 8th Street South comes to a dead end at the South margin of First Alley South. There is no access to the freight station from the South. It can be reached only by driving off Central Avenue down 8th Street South or by traversing an alley one-half block South of and parallel to Central Avenue. The entrance to the alley is from 7th Street. It is narrow and has commercial cars and trucks parked along the same. 7th Street and Central Avenue are both heavily traveled and it is difficult to turn into the alley to gain access to the freight station. Exit from the alley is possible only by making a complete U turn

at the station and proceeding North on 8th Street to Central Avenue, or by going Westward down the alley into 9th Street. Traffic on both Central Avenue and 9th Street is so heavy it is difficult and often unsafe to leave the alley and merge with the traffic on either Street and is oft-times dangerous.

The switches connecting the main line to the tracks serving this station are on 7th Street South on the East end, and 9th Street South on the West end, so that every train movement has to block either 9th or 7th Street with the possible exception of an engine pulling one car.

As a result of its inaccessibility and the switching movements of the freight trains, the freight depot cannot and does not provide the convenience and necessity required by the city of 125,000 people, which St. Petersburg has grown. The City is still growing rapidly and the condition which exists now will grow tremendously worse as the City continues to grow.

11. An average of 147,845 motor vehicles cross the tracks of the Atlantic Coast Line Railroad Company from and including 13th Avenue North Southeastward and Eastward to the Bay daily. There is an average of 387 daily train movements over these same crossings, causing 4,470 motor vehicles to be delayed at said crossings daily. The total time occupied by trains at these crossings daily are 7 hours and 44 minutes and each crossing, on the average, is occupied by trains 27 minutes and 18 seconds daily. The traffic signals in St. Petersburg are so regulated as to provide the maximum continuous flow of traffic. When the crossings are blocked by trains the flow of traffic is halted causing it to back up several blocks and thereby blocking the traffic on the cross streets.

12. The locations of the freight and passenger depots together with the location of the tracks serving the same greatly retard the expansion of the business district of St. Petersburg and vitally and adversely depreciates the values of property in the proximity of the railroad station and the railroad tracks.

Based upon the record herein, and the laws of Florida applicable thereto, the commission has arrived at and announces the following conclusions of law:

1st. The Atlantic Coast Line Railroad passenger depot is grossly inadequate and incapable of providing the public convenience and necessity required by the traveling public.

2nd. The Atlantic Coast Line Railroad freight depot is grossly inadequate and fails to provide the public convenience and necessity required by those who ship and receive freight through said depot.

3rd. That both the passenger and freight depots should be relocated so as to better serve the inhabitants of the City of St. Petersburg to which said railroad company is tributary.

4th. The motion to dismiss filed by respondent and based upon the City Ordinance requiring elevation of the railroad's tracks should be denied.

NOW, THEREFORE, IN CONSIDERATION THEREOF, it is ORDERED by THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION that the respondent, ATLANTIC COAST LINE RAILROAD COMPANY, be and it is hereby directed to remove its St. Petersburg, Florida, freight and passenger depots from their present locations in said city and to construct and operate new, modern and adequate freight and passenger depots, capable of fully meeting the convenience and necessities of the public, at such location or locations in said city consistent with the public interest, safety and welfare, as may be determined and directed by this Commission pursuant to a further hearing to be held herein at a time and place subsequently to be announced by the Commission.

By Order of the Commission at Tallahassee, Florida this 30th day of June, A. D., 1955.

BOLLING C. STANLY
Executive Secretary

(SEAL)

LWP

Opinion of Circuit Court of Appeals for the Fifth Circuit.

CITY OF ST. PETERSBURG *v.* ATLANTIC COAST LINE R. CO.

No. 9144.

CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT,

January 7, 1943.

Appeal from the District Court of the United States for the Southern District of Florida; Alexander Akerman, Judge.

Action in ejectment by the City of St. Petersburg against the Atlantic Coast Line Railroad Company. Judgment for defendant, and plaintiff appeals.

Affirmed.

CARROLL R. RUNYON and HARRY I. YOUNG, both of St. Petersburg, Fla., for appellant.

McKINNEY BARTON, of St. Petersburg, Fla., for appellee.

Before SIBLEY, HOLMES, and McCORD, Circuit Judges.

McCORD, Circuit Judge.

The City of St. Petersburg, Florida, brought an action in ejectment to recover the use and possession of a vacated and closed portion of a street which, since the year 1905, has been continuously used and occupied by the Atlantic Coast Line Railroad Company as part of the site of a freight depot. The material facts were stipulated, judgment was entered for the railroad, and the City appealed.

Eighth Street South was and is a public street in the City of St. Petersburg. Reciting as a preamble that the railroad company desired to build a freight depot on Eighth Street, and that the erection of such depot would be for

the benefit of the City, the City Council of the City of St. Petersburg on September 21, 1904, passed Ordinance 73 to vacate and close the portion of Eighth Street involved in this action, and to convey the property to the railroad for use as a freight depot. By Ordinance 88, approved February 24, 1905, the City further authorized the railroad to occupy the vacated portion of Eighth Street described in Ordinance 73, "for the purpose of constructing and maintaining a freight depot thereon". By warranty deed dated December 3, 1904, the railroad acquired from the owner title to lots 75 and 76 of Ward and Baum's addition to St. Petersburg, which lots abutted the vacated and closed portion of Eighth Street.

Shortly after the passage of Ordinance 88, the railroad erected a new passenger station at the site of its combined freight and passenger depot, and began the construction of a new, wooden freight depot extending across Eighth Street and occupying that portion of the street which had been vacated and closed by the City. The freight depot was completed in October, 1905. In 1913 the railroad began construction of a brick freight depot upon the same property, and at that time nearby property owners sought to enjoin the City from permitting and the railroad from constructing the depot. The railroad company defended the action alone, and on demurrer the bill for injunction was dismissed by the trial court. On appeal, the judgment was affirmed. *Bozeman* v. *City of St. Petersburg, et al.*, 74 Fla. 336, 76 So. 894. More than twenty years thereafter, and on August 20, 1935, the City Council passed Ordinance 824-A, repealing Ordinances 73 and 88, and authorizing the proper City officers "to take such necessary steps to effect the opening of such portions of Eighth Street as are now closed and obstructed as particularly described in this Ordinance for the use by the public for the purpose of public travel". Thereafter the present action was instituted in the State Court, and then removed to the Federal Court.

Appellant contends: (1) That the City had no legislative authority to pass Ordinances 73 and 88; (2) that if the City did have authority to vacate and close the street, the

authority was improperly exercised "for the benefit of a private corporation"—an action "not sanctioned at law"; and (3) that the action of the City was, at most, a grant to a private corporation of a right or franchise in the street, "which said franchise is revocable when the said street becomes necessary for the benefit of the public welfare of said City".

[1, 2] It is stipulated that at the time of the passage of the questioned ordinances there was applicable to the City of St. Petersburg a statute of the State of Florida which became effective in 1887, and which provided that city councils "shall have power to regulate, improve, alter, extend and open streets". Fla. C. G. L. 1927, Sec. 2953 (1843). There was also in force Sec. 680 of the Revised Statutes of the State of Florida of 1892, which was effective on June 14, 1892, and which provided that a "city or town council shall have power and authority to alter * * * or discontinue any park, street, avenue, alley, highway or any other way which has heretofore been laid out, fixed or established". The latter statute clearly provides that streets "heretofore * * * laid out" may be discontinued. The contention that Eighth Street had not been therefore laid out, fixed, or established, is foreclosed by Paragraph 20 of the Stipulation of Facts which unequivocally states that Eighth Street, "embracing the property in litigation herein had been laid out, fixed and established prior to June 14, 1892", and remained as such was laid out, fixed and established until the passage of Ordinances 73 and 88. Appellants say, however, that construction of Sec. 680 should be made only after consideration of a prior statute, Sec. 2 of Chapter 3164 of the Florida Laws of 1879, and that the words "heretofore been laid out" should be limited to mean laid out and established prior to the passage of the original act of 1879. There is no necessity for referring to the old act. The Revised Statutes of 1892 were passed pursuant to Chapter 4055 of the Florida Acts of 1891, which provided that all statutes and parts of statutes not included in the revised statutes were repealed. Sec. 680 is plain and unambiguous on its

face, and there is no occasion to resort to the prior statute to raise and resolve a doubt that does not exist. The City had statutory authority to alter, vacate, or discontinue the street. 59 C. J., p. 1098, Sec. 648; Florida Cent. & P. R. Co. *v.* Ocala St. & S. R. Co., 39 Fla. 306, 22 So. 692; Florida East Coast Ry. Co. *v.* Worley, 49 Fla. 297, 38 So. 618, 623.

[3] Appellant's contention that the vacation of Eighth Street was for the benefit of a private corporation, and therefore unauthorized and void, overlooks the fact that the Atlantic Coast Line Railroad Company is a public utility corporation; and that, as the first ordinance recites, the erection of the new freight depot on Eighth Street was for the benefit of the City and its inhabitants. Under the provisions of Section 17, Chapter 5361, Acts of Florida of 1903, the City Council had authority "to grant by lease for a term of years easements or fee simple titles to public utility corporations any public properties". The railroad company accepted the benefit of the ordinances and lived up to its obligations, and built a new passenger depot at the old location and a new freight depot at the agreed location on Eighth Street. It cannot be doubted that development of the freight and passenger transportation facilities to and from St. Petersburg played no small part in the progress and development of the City through the past thirty-five years. The case at bar does not fall within the rule prohibiting cities from vacating public properties, which they hold in trust, for the private use of individuals and corporations. McQuillin, Municipal Corporations, 2d Ed., Vol. 4, Par. 1520, p. 265, *et seq.* Cf. Lutterloh *v.* Town of Cedar Keys, 15 Fla. 306; Florida Cent. & P. R. Co. *v.* Ocala St. & S. R. Co., 39 Fla. 306, 22 So. 692; Roney Investment Co. *v.* City of Miami Beach, 127 Fla. 773, 174 So. 26.

[4] As to appellant's third contention, we think it clear that a re-establishment of the vacated portion of Eighth Street may not be accomplished by simply passing an ordinance repealing Ordinances 73 and 88 which have been relied upon through the years. These ordinances were

accepted and large amounts of money expended to accomplish the necessary improvements, and destruction of the railroad properties so placed on that property may not be accomplished, except by condemnation or other legal proceedings which allow just compensation for their taking. Atlantic Coast Line R. Co. *v.* Duval County, 114 Fla. 254, 154 So. 331; Atchison, T. & S. F. R. Co *v.* City of Shawnee, 8 Cir., 183 F. 85; Grand Trunk Western R. Co. *v.* City of Flint, D. C., 55 F. 2d 384; City of Flint *v.* Grand Trunk Western R. Co., 5 Cir., 69 F. 2d 604.

[5] These propositions aside, however, we think that under the undisputed facts in this case it would be manifestly inequitable and altogether unjust for appellant to prevail in this action. For more than thirty years all parties in interest relied and acted upon the ordinances passed by the City Council in 1905. The contested portion of Eighth Street was vacated; at great cost new depots were erected and switching facilities were constructed. These improvements did not enure alone to the benefit of the railroad, the City of St. Petersburg and its citizens were benefited by such improvements throughout all these years. At this late day the City should not, and may not, be heard to complain. McQuillin, Municipal Corporations, 2 Ed., Vol. 4, Par. 1515, p. 251; City of St. Petersburg *v.* Meloche, 92 Fla. 770, 110 So. 341; Twenty-Third St. R. Corp. *v.* City of Miami Beach, 140 Fla. 257, 191 So. 464, 469; Florida East Coast R. Co. *v.* City of Miami, 76 Fla. 277, 79 So. 682, 686, 1 A. L. R. 303.

The judgment is affirmed.

Order Denying Rehearing.

IN THE

SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955.

Friday, November 18, 1955

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Petitioner,
vs.
WILBUR C. KING, Chairman, and JERRY W. CARTER, and ALAN S. BOYD, Members, of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,
Respondents.

Petitioner has filed a petition for rehearing in this cause and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

The Petitioner in said petition prayed in the alternative staying further proceedings in the cause by the Respondents so that Petitioner may apply for and obtain, if it can, a Writ of Certiorari from the Supreme Court of the United States and upon consideration thereof, it is ordered that further proceedings in this cause be and are hereby stayed for ninety days from this date to enable the Petitioner to have a reasonable time in which to apply for and to obtain, if it can, a Writ of Certiorari to the Supreme Court of the United States. This order is subject to cancellation at any time if the Appellant fails to prosecute certiorari proceedings with reasonable dispatch.